

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

FILED
U.S. DISTRICT COURT
BRUNSWICK DIV.

2013 MAR 13 A 11:00

CLERK *[Signature]*
SO. DIST. OF GA.

ERIC WATKINS,

Plaintiff,

vs.

CIVIL ACTION NO.: CV212-037

ANTHONY HAYNES, Warden;
DAVID NEWBOULD; JASON ROGERS;
JOSE FUENTES, KEITH WELLINGTON;
LANCE JAMES; RANDY MILTON;
RICKY DENT; STEEN NILE; TOMMY
CARTER, WESLEY POPWELL;
WILFREDO GODREAU; SHIRLEY
TERRADAS, Psychologist; JERRY
TINCHER, Associate Warden;
VELVETE CHARLES; and
DONALD HUDSON,

Defendants.

ORDER and MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff filed this cause of action pursuant to 28 U.S.C. § 1331 and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).¹

Presently before the Court is Defendants' Motion to Dismiss for Want of Prosecution.

Plaintiff filed a Response, and Defendants filed a Reply.

In this Motion, Defendants contend that Plaintiff's Complaint should be dismissed based on Plaintiff's failure to prosecute his case and his failure to follow the orders of this Court. Specifically, Defendants state that they noticed Plaintiff's deposition for

¹ The undersigned need not recount the full procedural history of this cause of action, as the parties are aware of what has occurred in this case up until this date.

January 30, 2013, in Brunswick, Georgia. Plaintiff filed a notice of rejection of deposition. In response, Defendants filed a motion to compel Plaintiff's presence at a deposition, as well as a second notice of deposition for February 27, 2013. Defendants assert that these two (2) documents were mailed to Plaintiff's address listed with the Court. Plaintiff did not file a response to Defendants' motion. The undersigned granted Defendants' motion on February 25, 2013, and instructed Plaintiff that he was to appear at this deposition on February 27, 2013. Defendants aver that counsel called Plaintiff and informed him that the Court granted their motion to compel. Defendants also aver that Plaintiff informed counsel that he never received Defendants' motion and would not attend the deposition on February 27, 2013. Defendants further aver that counsel asked Plaintiff to inform them of a date and time in the following week that he would appear for his deposition, and Plaintiff failed to do so.

Plaintiff contends that he mailed a motion to stay the Court's order granting Defendants' motion to compel because he did not receive Defendants' motion and could not respond to this motion.² Plaintiff states that he did not change his mailing address until sometime in late February, and his previously-used mailing address was still a "good" address for him until that time. (Doc. No. 96, p. 13). Plaintiff also states that "something" could have gone wrong with the mail since the United States Postal Service was involved. (Id.).

While the undersigned cannot condone Plaintiff's actions regarding Defendants' counsel's attempts to depose him, Defendants' Motion to Dismiss should be **DENIED** at this time. Defendants' counsel shall reschedule Plaintiff's deposition and notice the Court and Plaintiff of that deposition. Plaintiff is advised that his failure to attend his

² Plaintiff's Motion to Stay (Doc. No. 88) is pending and is **DISMISSED** as moot.

deposition will result in the dismissal of his Complaint. See FED. R. CIV. P. 37(d)(1)(A)(i).

SO ORDERED and **REPORTED** and **RECOMMENDED**, this 13th day of March, 2013.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE